IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER No.631 of 2006

Mr.Jagdish K. Shetty .. Appellant

versus

Mr.Narayan G. Mendon .. Respondent

...

Mr.B.P. Shukla for the appellant.

Mr.J.J. Shah for the respondent.

CORAM : D.G. KARNIK, J

DATED : 1st September 2006

P.C.:

1. Heard learned counsel for the parties. By consent the appeal is heard finally.

2. By this appeal the appellant, who is the original plaintiff, challenges the order dated 24th April 2006 passed by learned Judge of the City Civil Court rejecting his motion for interim injunction.

3. The suit premises are a shop admeasuring about 10’ x 6’ situated on the ground floor of Geet Govind Building at Plot no.7, Jawahar Nagar, Goregaon. The respondent is a tenant of the suit premises. Previously, the respondent was carrying on business in the said premises. By an agreement dated 11th March 2003 styled as business conducting agreement, the respondent allowed the appellant to use and occupy the suit premises for the business. Apprehending that the respondent would illegally dispossess him, the appellant filed a suit for a permanent injunction restraining the respondent from dispossessing him without due process of law. In the suit, the appellant took out a motion for an interim injunction restraining the defendant from dispossessing him from the suit premises except by due process of law. The respondent contested the motion and after hearing the parties the trial court dismissed the motion. That order is impugned in this appeal.

4. In paragraph no.10 of the affidavit in reply to the motion, the respondent has admitted that he gave on leave and licence the business to the appellant for temporary period and also handed over to him Shops and

Establishment Certificate and electric connection standing in his name. He has further stated that he called upon the appellant to remove himself from the suit premises and hand over the same to the respondent before expiry of the period of the agreement as the appellant had committed fraud on him. Thus, execution of the agreement is not denied. Handing over the business and the possession of the suit premises by the respondent to the appellant is also not denied. If the respondent claims that any fraud was committed on him, it is open for him to file a suit for cancellation of agreement and for possession or whatever other reliefs he wishes. He having lawfully allowed the appellant to be in possession of the suit premises, cannot unlawfully dispossess him except by due process of law. In the circumstances, trial court ought to have granted an injunction.

5. For these reasons, the appeal is allowed. Impugned order is set aside and respondent is hereby restrained from disturbing the possession of the appellant except by due process of law.

(D.G. KARNIK, J)